

STATE OF ALASKA

ORIGINAL

EX PARTE OR LATE FILED

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT

REGULATORY COMMISSION OF ALASKA

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FEB 16 2001

FCC MAIL ROOM

February 9, 2001

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: CC Docket No. 00-46 Ex Parte

Dear Ms. Salas:

Enclosed are an original and ten copies of an Ex Parte filing of the Regulatory Commission of Alaska submitted in CC Docket No. 00-46.

Sincerely,
REGULATORY COMMISSION OF ALASKA


G. Nanette Thompson
Chair

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February 9, 2001

The Honorable Michael K. Powell, Chairman FCC
The Honorable Susan Ness
The Honorable Harold Furchtgott-Roth
The Honorable Gloria Tristani

Re: CC Docket No. 00-46
Petition of AT&T Corp. and Alascom, Inc.

Dear Commissioners:

The Regulatory Commission of Alaska (RCA) appreciates the long standing commitment of the Federal Communications Commission (FCC) to carefully consider Alaskan telecommunication issues. We have closely studied the issues raised by the Petition filed by AT&T Corp. (AT&T) and Alascom, Inc. (Alascom) in CC Docket No. 00-46. Many of the issues raised in the petition are identical to ones we are addressing as we evaluate the intrastate interexchange market structure in Alaska (RCA Docket R-98-1). We thank the FCC for allowing us the opportunity and the time to evaluate the complex issues raised by the Petition before filing our comments in CC Docket No. 00-46.

In the Petition, AT&T and Alascom assert that conditions have changed so that it is appropriate to end unnecessary regulations and conditions which are applied to the Alaska interstate market. The Petition argues that granting the relief would lead to improved customer support in Alaska, expanded efficiencies and cost savings, improved opportunity for competition in the form of services and facilities-based entry, and reduction in the regulatory burden placed on AT&T and Alascom. The parties request the FCC to:

- 1) Remove the requirement that AT&T and Alascom file and maintain separate FCC tariffs for identical interstate services;
- 2) Remove the requirement that the companies adhere to the affiliate transaction rules;
- 3) Allow Alascom and AT&T to be merged;
- 4) Allow Alascom to seamlessly transfer its customers to AT&T, without requiring customer authorization, verification, or advanced notice;
- 5) Cancel the Alaska Common Carrier Services (CCS) Tariff FCC No. 11 after two years;
- 6) Cap the CCS rates during the two years the CCS tariff remained in place; and
- 7) Repeal the "Bush Policy" preventing facilities competition in much of rural Alaska.

We see merit in some but not all of the proposals advanced in the Petition. We are unconvinced that merger and reduced regulation for Alascom will lead to the benefits cited without raising rates, negatively affecting competition, and compromising our ability to regulate Alascom.

1) Alascom retains market power in Alaska and care must be taken in relaxing any restrictions placed on the company.

We disagree with AT&T and Alascom that market conditions in Alaska are such that Alascom lacks market power and, therefore, reduced regulation is appropriate. Alascom has an economic incentive and market power to raise its carrier-to-carrier rates and private line rates for communications in areas where it has a facilities monopoly. Well over half of the 250 rural locations in the state have no facilities competition.¹ Alascom retains ownership and control over the earth stations² and microwave links to these locations.³ Alascom's monopoly over services it provides to other carriers

¹ Alascom cites the presence of fiber cable capacity as supporting its petition for reduced regulation. Outside of a small handful of locations, rural areas are served by satellite or microwave and not fiber plant.

² While there may be a number of satellites with coverage over Alaska, these satellites might not have available capacity to allow a competitor to serve statewide. In any event, service is impossible unless the competitor has access to earth stations capable of receiving the satellite signal. In Alaska, a large portion of the rural earth stations are controlled by Alascom. Duplicate earth station facilities exist in only 56 rural sites.

³ Alascom asserts it has no market power in part because 90% of Alaska access lines have a choice of at least two interexchange carriers. This statistic is deceiving given the large concentration of access lines in urban areas of the state. Alascom retains a facilities monopoly over vast areas of Alaska. Rural areas, while having few access lines (and few calling minutes), are dependent upon Alascom for

and over end-user private line services at these locations would allow Alascom the power to charge unreasonable rates and degrade service quality absent regulatory oversight. For private line services, Alascom retains a 75% market share statewide, suggesting that even in areas where it does not have a facilities monopoly, Alascom still has market power.

Premature deregulation would negatively affect rural customers and competitors. If Alascom is able to limit availability of carrier-to-carrier services or raise rates for these services, it could limit competition for retail Message Telephone Service (MTS), private line and other services. Potential competitors would be discouraged by unreasonably high resale costs. Those carriers that do compete may pay higher than necessary carrier-to-carrier charges and will pass on these costs to their customers. Higher rates ultimately paid by schools, libraries, and rural health care providers, will also affect the federal universal service fund. Similarly, increased rates or lack of availability of adequate carrier-to-carrier arrangements for advanced services may make it less likely that rural customers will obtain affordable access to the Internet.

We have received extensive comments in our Docket R-98-1 proceeding regarding the level and extent of competition in the Alaska interexchange market. No commentor, outside of Alascom, asserted that Alascom carrier-to-carrier services should be deregulated statewide. Resellers as a whole contend that our continued review of state carrier-to-carrier services was needed to ensure fair and reasonable provision of services provided by Alascom.

Many argued that Alascom and its main competitor, GCI Communication, Inc., functioned as a duopoly in the market. We note that for Message Telephone Services, these two carriers retain over 80% of the Alaska market. These carriers also control the majority of the private line circuits in the state.

We have done an extensive analysis of the areas where GCI has built duplicate earth station facilities in rural areas. Data reported to us on the GCI rural DAMA project shows that it is likely unprofitable to build duplicate earth station facilities in most of the rural areas of Alaska. At least for now, effective facilities competition is not likely to occur in rural areas where Alascom retains a facility monopoly. Lifting the restriction is unlikely to be

basic communication needs and should not be denied adequate regulatory protection.

sufficient protection to ensure that competition will occur. Competitors and consumers could be harmed if the FCC chooses to prematurely deregulate Alascom's carrier-to-carrier services.

As a last point, many of the petitioner's arguments on this matter are based on only a small segment of the market. While it may be true that Alascom has lost MTS market share statewide, this says nothing about data, advanced services, and carrier-to-carrier services. Alascom has not explained why loss in statewide MTS market share should equate to deregulation of all Alascom carrier-to-carrier services. Alascom and its major competitor GCI continue to hold over 80% of the existing MTS market. None of the competitors cited by Alascom in its comments besides GCI have been able to accrue appreciable interexchange market share in Alaska though entry has been allowed for almost a decade.

For the above reasons, we believe that Alascom retains market power and continued interstate regulation is necessary to ensure development of a healthy competitive market.

2) Do not remove the requirement that the petitioners adhere to the affiliate transaction rules.

AT&T and Alascom seek reduced regulatory scrutiny of their affiliated transactions. If approved, this would allow AT&T to transfer assets and costs among its business units, including Alascom, without regard to the public interest or competitive effects. Maintaining disclosure of the affiliated transaction information protects against cost and asset transfers that are anticompetitive or contrary to the public interest.

While we allow Alascom significant price flexibility to lower rates at will, we closely scrutinize any retail rate increases and certain carrier-to-carrier service rates. Failure to disclose affiliated transaction costs may compromise our ability to fulfill our intrastate obligations to ensure that interstate costs, or unreasonable affiliated transaction costs are not paid by intrastate customers.

Any costs of AT&T compliance with the affiliated transaction rules are minor compared to its overall operations. We believe that maintaining the affiliate transaction rules is in the public interest and will assist us in performing our duties to oversee fair and reasonable competition and rates in Alaska.

3) Do not allow Alascom and AT&T to merge.

Alascom's financial books and records currently only relate to Alascom's operations. The FCC, based on the recommendation of the Alaska Joint Board, applied a favorable federal separations factor to Alascom's circuit equipment account (mostly satellite related costs) allowing the majority of cost recovery to be assigned to the interstate jurisdiction. If AT&T were to merge its financial records with those of Alascom, this favorable separations factor would likely be eliminated or replaced, resulting in a shift of costs and confiscation liability to the state jurisdiction. Similarly, merging the records of AT&T and Alascom will affect state cost assignment and confiscation liabilities in unknown ways. Coupled with elimination of disclosure of transfers between AT&T operations, the merger could ultimately lead to higher rates for Alaskans. We request that the FCC not grant any request to merge the two companies absent clear and reasonable evidence that the merger will not materially increase intrastate cost assignment and confiscation liability of the RCA.

If the financial records are merged,⁴ it will become difficult to audit Alascom and track intrastate and interstate costs as the Alaska costs will be merged with AT&T's nationwide costs. This added difficulty will affect our ability to regulate Alascom. At a minimum, if it allows this merger, the FCC should require AT&T to keep sufficient detail to allow tracking of Alaska costs while preventing jurisdictional cost shifts.

Contrary to assertions made in reply comments, we continue to employ book costs as a key factor in evaluating intrastate rates. We also require Alascom to annually report its historical costs, and require a portion of this data to be reported on a separated basis. This data is necessary for a variety of reasons, including evaluation of market conditions. We have a pending proceeding requiring Alascom to support its intrastate wholesale rates based on its costs.⁵ Continued review of Alascom historical costs may also be necessary if we ultimately decide to create a state subsidy supporting toll services as is proposed by Alascom in RCA Docket R-98-1. We therefore refute that there is no longer a need for jurisdictional separations of costs or

⁴ In reply comments, AT&T and Alascom state that they would keep a separate set of books for Alascom. However, AT&T by its comments also implicitly admits that merger with Alascom could affect a revenue requirement analysis and book costs of Alascom. Significant questions therefore remain on how data for Alascom operations (as recorded in the books) would be generated and the degree to which AT&T and Alascom financial data would truly be separate.

⁵ See RCA Docket U-98-27.

that separations and historic costs are immaterial to our regulation of Alascom's intrastate rates.

Last, we believe that merger of the two carriers cannot occur absent our approval. Neither carrier has sought such approval from the RCA. AT&T has not discussed whether it will seek to adopt Alascom's intrastate tariff or transfer of the state certificate. Nor is it clear whether AT&T will maintain a business office or customer service office(s) in Alaska if its merger request is granted. Nor do we know how many positions in Alaska will be lost as a result of the merger or how the management of the company would be affected.

Based on the record available at this time, we believe the FCC should not allow merger of AT&T and Alascom.

4) Allow Alascom to seamlessly transfer its customers to AT&T, without requiring customer authorization, verification, or advanced notice if the merger receives all necessary approvals.

The petition does not address what happens to the intrastate customers served by Alascom. Presumably it is AT&T's intent to also transfer these Alascom customers to the merged company. We agree that transfer of customers should occur in the least disruptive manner possible if the merger is granted.

5) Do not cancel the Alaska Common Carrier Services (CCS) Tariff FCC No. 11 after two years.

Tariff No. 11 is essentially an interstate version of the Alascom intrastate wholesale tariff currently on file at the RCA. Prematurely eliminating the tariff and allowing deregulation could have a harmful effect on competition by allowing Alascom the freedom to charge unreasonably high interstate rates on Bush routes where competitors are forced to seek termination and origination of interexchange services from Alascom.

AT&T and Alascom argue that the interstate tariff is a "regulatory jungle" and of little value to competitors. If there are problems with the interstate tariff, there may be ways to improve the tariff given further review. Total elimination of the tariff is unwarranted.

AT&T and Alascom are essentially seeking long term freedom to price carrier-to-carrier services as they see fit. These types of services are an essential part of the competitive market. Alascom is the only carrier in Alaska with facilities statewide. All of Alascom's competitors depend on Alascom facilities where Alascom has a facilities monopoly. Competitors do not have the option of not buying from Alascom (either directly or indirectly through another carrier) and must pay Alascom's price for service. There is little opportunity that voluntary negotiations between the carriers will result in a reasonable rate so long as Alascom retains control over bottleneck facilities.

Alascom can obtain an unfair competitive advantage if it overprices its carrier-to-carrier services. An overstated price signal may discourage a viable potential entrant from entering the market or from competing effectively. Similarly, receiving an overstated price signal might encourage a non-viable competitor to build its own network, resulting in uneconomic duplication of facilities.

Given the facility monopoly Alascom maintains in rural areas, some form of Tariff 11 remains essential.

6) CCS rates should not be capped during the two years the CCS tariff remains in place.

If Alascom is correct that the CCS tariff is not functioning as intended, then it makes little sense to make it impossible to make changes to that tariff over the next two years. We have not made a study of the CCS tariff rate design, but it is possible that the CCS tariff is not versatile enough to meet the needs of carrier customers. For example, carriers in the intrastate market have commented that they do not have the opportunity to purchase wholesale services adequate to provide advanced and private line data applications. If the interstate CCS tariff has not changed in recent years, it might not accurately represent the network reconfiguration and cost changes associated with Alascom converting many of its satellite links to DAMA technology.

7) Repeal the “Bush Policy” which prevents facilities competition in much of rural Alaska.

We agree with the petitioner that it is time to remove the federal restriction on facilities construction in rural areas. We have attached our recent order in R-98-1 that explains our rationale for lifting our similar state restriction.

8) Ranges of services offered to Alaskans might not be improved by allowing the merger to occur.

The petitioners assert that “over time”, integrating Alascom with AT&T will allow AT&T to offer the full range of interstate services that it offers in the Lower 48. We believe that if there were economic incentive for AT&T to provide its full scope of services to Alaskans, it would be doing so today.

AT&T makes no commitment that services to Alaska will be improved in the foreseeable future, only that “someday” it might happen if the petition is granted. If the FCC approves the petition based on a claim of improved service to Alaska, we request that the FCC condition its approval to ensure that the improvements mentioned will actually occur.

Similarly, AT&T argues that, as an entity separate from Alascom, AT&T cannot provide services to customers requiring service from a single provider. However, AT&T’s competitors may well face a similar prospect in that they must also rely on Alascom in areas where Alascom has a facilities monopoly. Nor is it clear how maintaining separate companies have led to the billing related service restrictions cited in the petition. To our knowledge, much of Alascom’s billing is currently performed through AT&T operations today and any inefficiencies in AT&T billing structure may continue even if the companies were merged.

Conclusion

In summary, we appreciate the FCC's time and consideration of these issues. We believe it may be premature to deregulate and grant many of the other remedies proposed through the petition. We do however support lifting the facilities restriction in rural Alaska.

Please do not hesitate to contact me or the RCA Staff if we can provide further information or may be of assistance.

RESPECTFULLY SUBMITTED this 9th day of February, 2001.


G. Nanette Thompson
Chair

CC:

FCC Office of the Secretary
Dorothy Attwood, FCC Common Carrier Bureau Chief
Marideth Sandler, Office of the Governor

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1 GCI Communication Corp. (GCI) is the only entity unconditionally
2 supporting the repeal of 3 AAC 52.355.¹ Alascom, Inc. d/b/a AT&T Alascom (AT&T
3 Alascom) recommends lifting 3 AAC 52.355 simultaneously with sharing of carrier of
4 last resort (COLR) responsibilities, implementing a Bush interexchange carrier high-
5 cost subsidy, and other policy changes. Others commenting on this matter either
6 strongly support preserving 3 AAC 52.355 or argue that the restriction should not be
7 lifted until certain conditions have been met (e.g., adequate wholesale rates are in
8 place, and a successor policy in place).

9 Those favoring repeal of 3 AAC 52.355 support their position with both
10 policy and legal arguments. The primary legal argument on this point is that
11 3 AAC 52.355 is not competitively neutral and violates the Communications Act of
12 1934, as amended by the Telecommunications Act of 1996 (the Act),
13 47 USC § 253(a). That section states:

14 IN GENERAL. -- No State or local statute or regulation, or
15 other State or local legal requirement, may prohibit or have the
16 effect of prohibiting the ability of any entity to provide any interstate
or intrastate telecommunications service.

17 Docket R-97-1 was opened to address the above legal question. At Public Meetings
18 held in 1997, the Alaska Public Utilities Commission (APUC),² concluded that
19 47 USC § 253(b) permits the policy of 3 AAC 52.355, if it is in the public interest.
20 Section 253(b) states:

21 STATE REGULATORY AUTHORITY. -- Nothing in this
22 section shall affect the ability of a State to impose, on a
23 competitively neutral basis and consistent with section 254 of this
title, requirements necessary to preserve and advance universal

24 ¹ Rather than repealing 3 AAC 52.355, GCI would replace it with affirmation that
construction is authorized in all areas of the state and prohibited in none.

25 ² The Alaska Public Utilities Commission is the predecessor agency to the
Regulatory Commission of Alaska.

1 service, protect the public safety and welfare, ensure the continued
2 quality of telecommunications services, and safeguard the rights of
consumers.

3 Through Docket R-97-1, the APUC also concluded it would maintain 3 AAC 52.355
4 pending further investigation of the public interest issue.

5 We investigated whether it was in the public interest to preserve
6 3 AAC 52.355. The main policy reasons cited for repeal of 3 AAC 52.355 are that
7 repeal would allow facilities competition in rural areas, leading to improved service and
8 rates, better options for consumers, and improved infrastructure. The record in Docket
9 U-95-38 shows that for whatever reason, AT&T Alascom became active in replacing
10 its aging earth stations about the same time GCI filed to construct duplicate earth
11 stations in rural Alaska.³ The Commission Staff (Staff) documented that AT&T
12 Alascom upgraded its satellite facilities to DAMA in almost all of the rural locations
13 served by the GCI Demonstration Project.

14 In areas where GCI has constructed duplicate earth stations, evidence
15 suggests that consumers have benefited by lower retail rates and better quality
16 service.⁴ It is also argued that the threat of facilities competition will lead AT&T
17 Alascom to maintain lower wholesale rates as high rates will lead a competitor to build,
18 instead of buy from AT&T Alascom. Allowing facilities competition may also provide
19 resellers more options when purchasing services.

20
21 ³In Docket U-95-38 we waived 3 AAC 52.355 allowing GCI to conduct a
22 Demonstration Project by building demand assigned multiple access (DAMA) earth
stations in 50 rural locations.

23 ⁴See Docket U-95-38 Staff Report of September 8, 1998. Service
24 improvements were mainly associated with better data rates and system quality
25 associated with provision of newly installed DAMA earth stations compared to then
aging incumbent earth stations. Since the time of the report, AT&T Alascom has
26 upgraded its facilities in most of the GCI DAMA locations.

1 Those seeking to retain 3 AAC 52.355 argue that the rural Alaska market
2 is too thin to support multiple earth stations. Some claim that GCI's demonstration
3 project was unprofitable. AT&T Alascom, while supporting repeal of 3 AAC 52.355,
4 agreed that it may not always make economic sense to have two sets of facilities in
5 every location. AT&T Alascom contended that GCI focused its rural demonstration
6 project on 56 of the most attractive Bush locations with the highest revenues and that
7 there are over one hundred and fifty small, unprofitable rural locations, where GCI
8 does not serve and probably never will.⁵ Similarly, the Rural Carriers Group (RCG)⁶
9 contended that most rural communities in the State would never see competitive
10 facilities-based carriers.⁷ RCG stated that competition would likely be in the form of
11 pure resellers or small enterprises owning a few switches and no transport facilities.
12 We note that if it is true that further duplicate facilities construction is unlikely in rural
13 Alaska, then it may make little difference in the market whether the we lift
14 3 AAC 52.355 or not.

15 Others argue that lifting the restriction will lead GCI or other carriers to
16 install uneconomical duplicate facilities in rural Alaska, creating undesirable
17 consequences, including increased costs, decreased revenues for the carrier of last
18 resort, increased demand on the state's universal service fund, and ultimately
19
20

21 ⁵ See Reply Comments of AT&T Alascom at 3.

22 ⁶ The RCG is a group of interexchange carriers, all of which are affiliated with
23 local exchange carriers. The RCG is made up of ASTAC Long Distance, Inc., AP&T
24 Long Distance, Inc., King Salmon Communications, Inc., MTA Long Distance, Inc.,
25 OTZ Telecommunications, Inc. d/b/a OTZ Long Distance, and TelAlaska Long
26 Distance, Inc. In its reply comments, the RCG was joined by Ketchikan Public Utilities.

⁷ See R-98-1, March 15, 2000, Hearing Transcript (Transcript) at p. 20.

1 increased rates to the public.⁸ Unicom, Inc. (Unicom) asserted that AT&T Alascom lost
2 about 28 percent of its subscribed customer base and significant revenues at GCI
3 demonstration sites, and that both GCI and AT&T Alascom have recently asked for
4 subsidies to support Bush interexchange services. Unicom recommended that Staff
5 analyze the financial impact of duplicate facilities, with the public given an opportunity
6 to respond to Staff's report. Unicom also argued that conditions had not changed
7 sufficiently to warrant lifting the restrictions under 3 AAC 52.355, and that in any event,
8 it is better to achieve competitive neutrality consistent with Section 253 of the Act by
9 allowing joint ownership of single earth stations rather than duplication of earth
10 stations.

11 There are also assertions that facilities competition will either not
12 enhance service quality or will lead to a fragmented, lesser quality network because
13 GCI and AT&T Alascom's networks are not interoperable. For example, if a GCI rural
14 customer seeks to call a location where there is only an AT&T Alascom earth station
15 facility, the call must be completed using two satellite hops, decreasing signal quality
16 and increasing transmission delay. Two hops are needed because the GCI and AT&T
17 Alascom networks use different satellites and are based on different technology,
18 making them incompatible.

19 We note however, that even if GCI were not in the market, customers
20 would continue to experience double hops until AT&T Alascom had sufficiently
21 upgraded its facilities statewide to allow single hops between locations. To the extent
22

23 ⁸ AT&T Alascom asserted the requirement for retail rate averaging protects
24 customers from rate increases resulting from uneconomic duplication of facilities. We
25 note however that there is no requirement that retail private line services be averaged
26 statewide and existing regulations provide AT&T Alascom the opportunity to increase
its rates given adequate demonstration of increased costs and our approval.

1 that facilities competition has spurred rural investment by the incumbent, then lifting
2 the facilities restriction may actually improve the likelihood that equipment statewide
3 will be upgraded to eliminate double hops. Last, we believe that the interoperability
4 problem is more related to the issue of whether we should split carrier of last resort
5 responsibilities, rather than the issue of repealing the facilities restriction.

6 Several of the IXC resellers, Unicom, and to some extent, the Alaska
7 Telephone Association (ATA), have also stated that it would be competitively unfair to
8 resellers to lift the facilities restriction when resellers are uncertain of market rules and
9 just, reasonable, and unbundled wholesale rates are not in place. Unicom stated that
10 if the restriction was lifted a company like GCI would have an advantage in the market
11 since it could upgrade its existing systems and begin delivery of service before
12 competitors could have access to unbundled rates and suitable wholesale services.
13 Some commentators state that resellers would be at a disadvantage when considering
14 whether to risk building or to continue buying service if reasonable wholesale rates
15 were not in place. Unicom contends that duplicate facilities will cause costs of
16 wholesale to skyrocket and will force competitors to pay for excess, duplicative
17 capacity. Furthermore, it is argued that allowing GCI the benefit of lifting
18 3 AAC 52.355 before having appropriate carrier of last resort (COLR) rules in place
19 would provide GCI with undue advantage.

20 Staff reported that the GCI DAMA project might be losing as much as
21 \$4.8 million per year.⁹ Staff qualified that while the project may be losing money, the
22 DAMA project might still be a better economic choice from GCI's perspective than to
23 purchase services from its competitors. Staff also argued that if GCI were to expand
24 its DAMA project to all areas where Alascom currently has satellite facilities, the

25 ⁹ See the R-98-1, Phase I Staff Report filed August 4, 2000.
26

1 project would likely become less profitable. Staff estimated that investment to serve
2 the remaining locations could be as high as \$44.7 million. Staff stated that while GCI
3 would appear to have the debt coverage to construct earth stations in these additional
4 locations, if it so desired, such investment might significantly impact GCI's unexpended
5 credit reserves. We conclude that it is unclear whether GCI, or any carrier, has a
6 strong economic incentive to invest \$44.7 million to reach what may be fewer than
7 13,000 rural access lines.

8 The record also contains information concerning the effects on AT&T
9 Alascom caused by facilities competition by GCI. AT&T Alascom asserted that its
10 market share, as measured in originating access minutes statewide, was reduced from
11 about 73 percent in 1995 to about 50 percent in 1999. Consistent with the minutes
12 data, between 1996 and 1999, AT&T Alascom reported that total company Long
13 Distance Message revenues dropped significantly from about \$138 million in 1996, to
14 \$117 million in 1998, and to \$99.8 million in 1999. AT&T Alascom also asserted that it
15 is losing money serving rural Alaska and the Commission should create an
16 approximate \$7.3 million intrastate interexchange carrier subsidy. We will address the
17 issue of interexchange subsidy in a later Order.

18 In its August 4, 2000, report the Staff argued that the intrastate
19 long-distance data provided by AT&T Alascom was limited and did not provide a full
20 picture of the effect of competition on AT&T Alascom. Staff claimed that historical
21 AT&T Alascom financial data does not clearly demonstrate that AT&T Alascom has
22 been unduly harmed by facilities competition in the last few years.

23 24 Relevant Statutes

25 There are two provisions within the State statutes relevant to the facilities
26 restriction:

1
2 Sec. AS 42.05.800(6):

3 [T]he commission should provide for competition in a timely manner
4 and should adopt regulations that eliminate inappropriate
5 impediments to entry for long distance carriers fit, willing and able
6 to provide service.

7 Sec. AS 42.05.810(c):

8 Except as provided in (b) of this section [grandfather clause
9 allowing AT&T Alascom facilities], the commission may prohibit
10 installation of facilities for origination or termination of long distance
11 service in a given location only if it determines that installation of
12 the facilities in that location is not in the public interest.

13 Given the above, we believe the state legislature directs us to favor long
14 distance facilities competition, but allows us the ability to restrict construction when not
15 in the public interest. Arguably, any actions we take must also comply with Section
16 253 of the Act previously discussed.

17 Discussion

18 We have analyzed the record in this proceeding and conclude that in the
19 short term, given the high costs of construction and the limited demand for service,
20 there may be limited economic incentive for any major competitor to build in rural
21 Alaska even if the Commission repeals 3 AAC 52.355. Lifting the facilities restriction
22 may promote industry negotiations for joint ownership arrangements for facilities
23 expansion or upgrade in rural areas. If technological advances make it economical to
24 construct competing rural facilities, we believe that lifting the restrictions imposed
25 under 3 AAC 52.355 may ultimately reduce costs of service and increase infrastructure
26 development in rural Alaska, leading to public benefit.

27 If duplicate construction occurs in the currently prohibited areas,
28 reductions to AT&T Alascom's annual revenues may be minimal given the small line
29 counts in those areas. We agree with AT&T Alascom that GCI has picked some of the
30 R-98-1(6) - (11/20/00)
Page 8 of 10

1 best rural locations in the State to set its DAMA project. Therefore, the greatest
2 revenue impact on AT&T Alascom may have already been seen. The evidence on
3 record in this proceeding does not adequately demonstrate that lifting the facilities
4 restriction will: a) lead to ruinous competition; b) seriously harm AT&T Alascom's
5 financial viability or c) materially affect AT&T Alascom's ability to provide service as
6 the carrier of last resort.

7 We do not believe that resellers will be materially harmed by the
8 unresolved policy and rate issues after we lift the restriction. In fact, we believe that
9 the argument of harm to the resellers is insufficient to warrant keeping the facilities
10 restriction in place. Resellers may also benefit to the extent they have improved
11 choice of facilities in rural areas.

12 We recognize there are unresolved issues that must be addressed,
13 some of which relate to the facilities restriction. The lifting of this restriction is a
14 necessary initial step in bringing this docket to resolution.

15 Upon weighing the risks, we believe consumers are better off if we allow
16 market forces to operate by lifting the facilities restriction. We believe that to the
17 extent competition can emerge in rural areas, lifting the facilities restriction will lead to
18 improved customer choice, lower rates, and possibly improvements in technology. We
19 believe that facilities based interexchange competition in rural areas is in the public
20 interest. Consistent with AS 42.05.800, AS 42.05.810, and 47USC§253(a), we
21 therefore repeal 3 AAC 52.355.

ORDER

THE COMMISSION FURTHER ORDERS, That, Section 3 AAC 52.355
will no longer be enforced and is repealed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 20th day of November, 2000.

BY DIRECTION OF THE COMMISSION

